The Fertilizer Institute

Nourish, Replenish, Grow

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January 4, 2008

Mr. Greg Colianni
U.S. EPA, Office of Wetlands, Oceans, and Watersheds
1200 Pennsylvania Avenue, NW, Mail Code 4504T
Washington, D.C. 20460

U.S. Environmental Protection Agency
Docket ID No. EPA-HQ-OW-2007-1126
EPA Docket Center (EPA/DC), Water Docket
MC 2822T
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Re: Docket ID No. EPA-HQ-OW-2007-1126: Comments on Draft Plan of Action for Reducing, Mitigating, and Controlling Hypoxia in the Northern Gulf of Mexico and Improving Water Quality in the Mississippi River Basin

Dear Mr. Colianni:

The Fertilizer Institute (TFI), on behalf of its member companies, submits these comments in response to the U.S. Environmental Protection Agency's (EPA) Draft Gulf Hypoxia Action Plan 2008. The document was announced in the Federal Register on November 23, 2007.

Statement of Interest

TFI represents the nation's fertilizer industry. Producers, manufacturers, retailers, trading firms and equipment manufacturers, which comprise its membership, are served by a full-time Washington, D.C., staff in various legislative, educational and technical areas as well as with information and public relations programs.

As TFI member companies produce and distribute fertilizer nutrients, we have a substantive interest in this report on Gulf of Mexico hypoxia.

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General Comments

TFI would like to thank the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force (Task Force) for its thoughtful and thorough evaluation of the action plan regarding hypoxia in the Gulf and potential nutrient mitigation and control options in the Mississippi-Atchafalaya River Basin. The Task Force did a commendable job of sorting through the scientific literature that has emerged since the January 2001 Action Plan and the significant progress made since the original recommendations were finalized.

TFI commends the Task Force for highlighting the progress that U.S. agriculture has made towards implementing specific action items from the 2001 Action Plan (pp. 11-12). American farmers and ranchers, in cooperation with United States Department of Agriculture (USDA), EPA, various state agencies, and local groups, have taken great strides in implementing best management practices and conservation practices that have helped reduce anthropogenic inputs of nitrogen and phosphorous into the Mississippi/Atchafalaya River basin. TFI is committed to continuing to assist efforts by the agriculture community to continue to reduce nutrient inputs to the basin. TFI requests that greater emphasis be placed on communicating the successes of nutrient reduction strategies by all partners involved in the Action Plan (pp. 28-29).

TFI generally agrees with the Task Force's principles and goals (pp. 4-5) and its continued emphasis on voluntary actions and working through existing federal and state programs. U.S. farmers have a long, successful history of working with USDA, EPA and state agencies to utilize best management and conservation practices, and we encourage the Task Force to continue to highlight the importance of these partnerships in addressing implementation of the 2008 Action Plan.

TFI remains concerned that the Action Plan's emphasis on adaptive management at the policy and interagency level may have unintended consequences at the farm level. While we understand the value and necessity of incorporating new science and addressing residual uncertainty in an iterative process, TFI is concerned that farmers and ranchers will be asked to implement best management and conservation practices in increasingly restrictive increments, without regard to the scientific merit of certain nutrient loss reduction practices. This is especially troubling given the time commitments included in nutrient management plans and land conservation agreements reached with various agencies.

TFI is also concerned with the findings of EPA for the *Draft Science Advisory Board Hypoxia Report* that recommended actions taken for mitigating hypoxia are "*...not likely to be as stringent as would be obtained if states adopted EPA's recommended reference condition values into state water quality standards for all waters.*" TFI requests that the Task Force and implementing agencies review all action items to provide U.S. farmers and ranchers some certainty that their on-the-field best management and conservation practices will be sufficient for all local, state and national water quality goals.

TFI would also point out that farmers are using, on average, the same or fewer nutrients than in 1980 to produce significantly greater levels of crops. Corn yields, for instance, have increased on average 1.8 bushels/year for the past 25 years. This trend is likely to continue or even improve given the increased emphasis on genetics of new high yielding, drought and insect tolerant varieties. In addition, nutrient use efficiency (NUE), one important metric of success in balancing environmental and economic goals, has increased by almost 50% in this same time period.

Specific Comments

Critical Needs (pp. 5-6)

"Progress is being made; however, it is ongoing programs, rather than new initiatives, that are responsible for most of the progress. Furthermore, progress is often the result of collateral benefits from actions states and the Federal agencies have taken independent of the hypoxia action plan to generally improve the state of the science, restore local water quality, or improve the efficiency of industrial and agricultural activities. The Task Force members are committed to continue, within these existing programs, current activities that contribute to meeting the goals of this plan, while increasing the targeting within this reassessment to fill gaps that are observed within the existing programs.

However, while landowners, States and Federal agencies have undertaken numerous nutrient reduction activities, these activities have not resulted in a reduction of the hypoxic zone. Resources are insufficient to attain the goals of the Action Plan and the lack of resources is the primary barrier to successful implementation of the plan."

There appears to be two contradictions in this section. The Task Force commits to using existing programs in its principles and goals section, yet laments the fact that progress to date has been made under existing programs. Second, the Task Force criticizes the lack of a resultant reduction in hypoxic zone size from actions taken to date while later acknowledging that "*uncertainties remain in the ability to characterize the spatial and temporal dynamics of hypoxia and the biological, chemical, and physical properties that contribute to it (p. 12).*" The same point is made earlier in discussing changes in nutrient flux and its effect on hypoxic size. "However, because of the complex interactions regarding nutrient fate and transport, and the existing uncertainties surrounding the linkages between nutrient fluxes and the size, duration and severity of the hypoxic zone, these changes are difficult to relate to changes in the measured size of the zone (pp. 10-11)."

TFI requests that greater value be given to progress made to date using existing programs and voluntary agreements in this section. Also, TFI requests that the Task Force acknowledge the inherent time lag between nutrient reduction and reduction in hypoxic zone size, as well as the uncertainty surrounding hypoxic conditions in the Gulf when assessing nutrient reduction strategies implemented since January 2001.

Progress on Actions in the 2001 Action Plan (pp. 11-12)

"Additional analysis of detailed nutrient pollution contributions from multiple sectors, including point sources and non-agricultural contributions needs to be undertaken" (Action 8 of 2001 Action Plan).

TFI agrees that this is a critical uncertainty in our understanding of hypoxia in the GOM and encourages implementing agencies to address this deficiency as soon as possible.

Conclusions from the Reassessment (pp. 113-16)

"Hypoxia has negative impacts on marine resources. Research on the deleterious effects of hypoxia on living resources in the Gulf suggest the occurrence of long term, ecological changes in species diversity, and possibly a regime shift (a large-scale, often rapid, reorganization of the entire ecosystem's food-chain that is difficult and often impossible to reverse)."

The SAB Draft Hypoxia Report discusses the fact that recovery in the Gulf should be more rapid than in enclosed ecosystems, given that the GOM is an open shelf system (SAB Draft Hypoxia Report, p. 52). TFI requests that the Action Plan language be changed to be consistent with the SAB's findings.

Actions to Accelerate the Reduction of Nitrogen and Phosphorous (pp. 16-21)

Again, TFI agrees with the emphasis on cost-effective, voluntary best management and conservation practices at the regional and local level. TFI also agrees that more funding is needed to implement these practices across a broader scale. However, TFI cannot support Actions One and Two of the draft Action Plan as currently written.

Action One creates another layer of top-down bureaucracy that is not authorized or funded at the federal level. The inclusion of *"…a federal strategy for restoration of the Mississippi/Atchafalaya River Basin's natural assimilative system would facilitate and help coordinate federal and state actions to implement the plan*" would create a federal nutrient total maximum daily load (TMDL) for the Gulf of Mexico, which TFI has and will continue to oppose. As the SAB report clearly demonstrates, nutrient drivers differ depending on which section of the GOM is being considered. A single TMDL for this system is technically and scientifically inappropriate.

It is also unclear how additional federal oversight for state implementation of numeric water quality standards for nutrients is necessary or authorized under the Clean Water Act (p. 18). State agencies are currently understaffed and underfunded to carry out existing water quality planning and implementation, including the establishment of water quality standards, designing and implementing TMDLs, and associated mandatory reporting. Another plan and additional reporting requirements only dilute existing funding and human resources. While TFI supports enhanced communication and coordination among implementing federal and state agencies, we request that Action One

be rewritten to eliminate a formal oversight and reporting requirement that is neither currently authorized nor funded.

Action Two also creates an unauthorized and unfunded mandate. TFI agrees that federal, tribal and state programs should attempt to enhance nutrient reductions. However, TFI requests a much more detailed proposal for how these agencies will "*…ensure that these projects, including land and river management strategies, and flood control and navigation projects throughout the basin, also examine their effect on Gulf hypoxia as well as look for opportunities to increase the ability to reduce nutrients which harm local waters and the Gulf through design and operation changes* (p. 19)" in decisions regarding large water infrastructure projects or day-to-day decisions on zoning, permitting, and land use planning. This is further complicated by the fact that there is still a good deal of science lacking as to the causes of hypoxia in the Gulf and even more uncertainty concerning the causal relationship between mitigating actions and concomitant decline in the hypoxic zone. TFI requests that this language be eliminated from the final 2008 Action Plan.

Action Two also states that "*…river diversions could be postponed until nutrient levels are significantly reduced upstream, which could undermine the restoration of what has come to be known as 'America's Wetland'*" (p. 19). TFI believes that this projection is subjective and does nothing to advance the discussion of Action Two. TFI requests that another more relevant example be used in its place.

In addition, Action Six describes tracking "*interim progress on the actions to reduce nitrogen and phosphorus by producing an annual report on federal and state program nutrient reduction activities and results.*" TFI suggests that this report be taken from data reported for existing programs. There is no need to divert scarce funds and resources away from on the ground efforts to reduce nutrient losses to the environment. Regardless of how and where this report comes from, TFI strongly requests that this section be rewritten so that the annual report includes data on all nutrient sources to reflect the fact that the hypoxic zone is not solely agriculture's problem to solve.

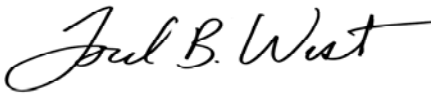
Finally, Action Nine urges engaging communications/media specialists and increasing publication of communication pieces and outreach materials to communicate the ongoing efforts of the task force. TFI suggests expanding this discussion to include greater detail as to how messages and communication pieces can be reviewed and approved by all stakeholders in this process. TFI is not interested in furthering a communication strategy that will continue to arbitrarily isolate one stakeholder, the U.S. agriculture sector, as the sole and unresponsive culprit for Gulf of Mexico hypoxia.

Action Three Develop and promote more efficient and cost-effective conservation and management practices for conserving nutrients within the Mississippi/Atchafalaya River Basin watershed and evaluate their effectiveness at all scales beginning with local watersheds and aggregating them up to the scale of the Mississippi/Atchafalaya River Basin. TFI supports Action Three and TFI efforts will continue to partner with implementing agencies to further progress in this area.

Conclusion

TFI is pleased to have the opportunity to comment on this important issue. TFI emphasizes that farmers and ranchers are adopting BMPs and conservation practices in record numbers; that the efficiency in which nutrients are utilized at the field level continues to improves; and that these factors will continue to reduce nutrient loading to the Gulf. If you have further questions regarding these comments, please do not hesitate to contact me at (202) 515-2700 or via e-mail at fwest@tfi.org.

Sincerely,



Ford B. West
President